

**APPLICANT:**  
**Community Baptist Church and**  
**Pastor Alphonso Higgins**

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**

**REQUEST: Variances to locate a church**  
**within the required setbacks in the R1**  
**District**

**HEARING DATE: January 8, 2007**

**Case No. 5573**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Community Baptist Church

**CO-APPLICANT:** Pastor Alphonso Higgins

**LOCATION:** Community Baptist Church – 303 Philadelphia Road, Joppa  
Tax Map: 64 / Grid: 28 B/E-2 / Parcel: 63 and 255  
First (1st) Election District

**ZONING:** R1 / Urban Residential District

**REQUEST:** A variance pursuant to Sections 267-24A(1) and 267-36B, Table IV, of the Harford County Code to permit a Church to be located within the 56.5 foot side yard setback with height adjustment (47 foot setback proposed) and within the 56.5 foot side yard setback with height adjustment (38 feet proposed), and a variance, pursuant to Section 267-36B, Table IV, to allow a use setback of 15.8 feet on the east side, a use setback of 22 feet on the southwest corner and a use setback of 43 feet on the northwest corner of the property (50 foot use setback is required) in the R1 District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

For the Applicant testified Pastor Alphonso Higgins. Pastor Higgins has been a member of Community Baptist Church for almost 30 years. The Church congregation originally had 29 members; it now has over 100 members. Pastor Higgins is now the minister of the Church. The Church is located at 303 Philadelphia Road, between Maryland Route 152 and Joppa Road.

The subject property itself totals approximately 3.524 acres in size, and is made up of two separate adjoining parcels. The Applicants propose to combine the two parcels. A review of the site plan shows that the Applicant has its sanctuary, containing approximately 1,200 square feet, and cemetery located on the approximately 100 feet wide by 460 feet deep parcel located to the southwest. Immediately adjacent to the northeast side is the parcel on which the new, approximately 10,870 square foot Church building with affiliated parking is to be located. The parcel to the northeast side is very roughly 190 feet wide by 718 feet deep.

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Pastor Higgins described the capacity of the present sanctuary as about 120 people. The present facility is totally inadequate for the size of the parish and the programs planned. The Church congregation would like to develop outreach programs, including daycare and athletic facilities and programs for youth. The Church facility needs to expand in order to provide these programs. Pastor Higgins further stated that the present facility was not large enough for the Church's Sunday School classes, women's fellowship gatherings, and other similar meetings.

Church representatives have contacted a number of its neighbors, offering to schedule meetings to discuss its expansion plans. No neighbor requested a meeting. A number of neighbors have submitted letters to the file expressing their lack of opposition to the requested expansion and variances.

Pastor Higgins described his neighborhood as a growing area, one which can use a larger Church facility. He believes the new Church building will be an asset to the community.

Next testified John Demos, a civil engineer with Richardson Engineering, LLC. Mr. Demos is the project engineer for the proposed expansion. Mr. Demos described the variances requested to both the building and use setback requirements:

On the northeast side yard of the site a 56.5 foot setback is required. The proposed Church building will come to within 47 feet of the side yard. Accordingly a 9.5 foot setback variance is requested in that location.

On the southwest side yard, the required building setback is 56.5 feet, although only 38 feet can be provided. Accordingly, an 18.5 foot setback variance is requested.

The Harford County Development Regulations also require a 50 foot use setback to both the northeast and southwest sides of the combined parcels. According to Mr. Demos, the Applicant now requests, accordingly, a 34.2 foot variance on the northeast side, and a 7 foot variance on the south side. Furthermore, a 28 foot variance is requested on the southwestern corner of the sanctuary.

Mr. Demos explained that due to the size of the parcels, the proposed Church building must be located as proposed. The parcel on which the new building is to be located is long and narrow. In order to allow adequate parking aisles, the building must be located generally within the center of the parcel. It cannot be located further to the southwest due to the existing cemetery, sanctuary and proposed drive aisle. It is located as close to the northeast side as possible, given the need to maintain an adequate buffer and drive aisle. Accordingly, the requested variances are necessary in order to allow the building to be built as proposed, in light of these constraints.

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Mr. Demos further testified that the two parcels will be consolidated, and that the height of the proposed Church will be 43 feet at its highest point.

Next testified Anthony McClune of the Harford County Department of Planning and Zoning. Mr. McClune explained that the required front yard setback typically is 50 feet; side yard setbacks are 40 feet; and the rear yard setback is 80 feet. He further explained that institutional structures in this R1 zoning district can be higher than normally allowed if building setbacks are increased. Setbacks must be increased one foot for every two feet that the structure would exceed the height limitation. In its district, the Church building may only be 30 feet high. A height of 43 feet is proposed, which would increase the required setback by 6.5 feet. Accordingly, the new building setbacks would be as follows: front yard 56.5 feet; side yards 46.5 feet; rear yard 86.5 feet.

Mr. McClune stated that after review of the proposal and an analysis of the required setbacks, the proposed Church expansion can adequately meet all applicable building setback requirements, provided the Church is constructed to a height of no more than 43 feet. Accordingly, no building setback variances are required.

Furthermore, however, a 50 foot use setback (which is applicable not only the building but also to associated parking and drive aisles) is required from all adjacent residentially used properties. The properties to the northeast and southwest of the Church property are used residentially. Accordingly, the proposed Church is in violation of the use setback on the northeast side as the parking areas will be approximately 15.8 feet from the east side. Furthermore, the parking areas on the west side of the Church parcel (the approximately 190 feet by 718 foot parcel) will be approximately 22 feet from the property line, which will result in a variance request of 28 feet in that area.

Mr. McClune also noted that a variance is necessary to the northwest side of the property where the parking area, closest to the driveway access off Philadelphia Road, comes to within 40 feet of the adjoining residential property. Again, a 50 foot use setback is required in this area.

Mr. McClune then summarized the Department's conclusion that only variances to the 50 foot use setback requirement are necessary for both the northeast and southwest property lines of the Church. The proposed Church structure on the northeast side is located within 50 feet of adjoining residential properties; the parking areas on the south and southwest side are located within 50 feet of adjoining residential properties. The Department also notes that variances have been requested for the existing sanctuary and cemetery.

The Department's position is that the variances should be granted. The Church cannot be expanded without the variances, and cannot build the proposed new Church improvements without the requested variances. The entranceway onto Philadelphia Road is well designed and should have minimum traffic impact. In order to help maintain the circular drive pattern throughout the property the Church must be located as proposed. Any other location of the Church would have adverse traffic consequences both on-site and at its entrance to Philadelphia Road.

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Mr. McClune stated that the existing sanctuary and cemetery are non-conforming uses, although the Department believes a variance would be more beneficial to the neighborhood as it would prohibit the Applicants from continuing the non-conforming uses they have at present.

No testimony or evidence was given in opposition. A number of individuals appeared in support of the application.

### **APPLICABLE LAW:**

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
  - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
  - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

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Section 267-24A(1) of the Harford County Code states:

*“(2) County buildings and structures, schools, houses or worship, hospitals or high rise apartment dwellings, provided that the front, side and rear yards shall be increased not less than one (1) foot for each two (2) feet by which said structure exceeds the height limitation established for the district in which said structure is located.”*

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The subject property consists of two parcels, which together total approximately 3.524 acres, zoned R1/Urban Residential, and located on Philadelphia Road in the Joppa area.

The property is now improved by an approximately 1,200 square foot sanctuary which has been used by the congregation of Community Baptist Church for approximately 30 years. This structure is fairly modest in size, in keeping with its original function as a worship location for originally 20-25 congregants. The property is also improved by a cemetery along its southeastern side.

The congregation, having experienced a substantial increase in its membership and expecting membership to increase even more in the future, now proposes the construction of a new facility, having dimensions of approximately 171 feet by 70 feet. The new Church building would be 43 feet in height, and would enable the congregation not only to properly house members for services, but also to provide outreach programs which as women’s fellowship; youth programs; Sunday School; and similar functions which the congregation is unable to adequately provide today because of its limited space.

Along with the Church building is proposed a significantly sized parking area of 133 spaces. The proposed new Church and its parking would take up almost all of the now vacant parcel. The existing Church building, the existing cemetery, the proposed Church, new parking area and existing storm water management facility will make use of the two parcels virtually in their entirety.

A review of Applicants’ site plan demonstrates a relatively straight forward site design, one which the Department of Planning and Zoning has characterized as a good design. The new structure will have drive aisles on both the northeast and southwest side which will facilitate traffic flow. Ingress and egress onto Philadelphia Road is located somewhat to the southeast side of the property along Philadelphia Road. The Department of Planning and Zoning believes this to be a good entrance, one which should have no adverse impact upon Philadelphia Road. The proposed Church will be separated from the southeastern property line of the combined parcel by almost 100 feet at its closest point.

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However, the parking area will be setback from the southeastern boundary by, at its closest point, approximately 44 feet. A 50 foot use setback is required at that point. To the south the parking area also comes to within 40' of the property line. Similarly, the parking areas on the northeast side also come to within roughly 18 feet or so of the side yard line which, again, requires a variance to the required 50 foot use setback. The Church building itself is not nearly as close, being at its closest point approximately 47 feet from the side yard lot line.

The Church building could, obviously, be located more to the center of the combined parcel if not for the existing Church and cemetery. It would appear to be virtually impossible, however, to construct an adequate driveway into the southeast side if the new Church were located any closer to the existing cemetery. Accordingly, it appears the Church is located at the most appropriate location in order to maximize the use of the property, provide good interior traffic flow, avoid impacts to the existing sanctuary and cemetery, and at the same time maintain the greatest possible setback from adjoining properties.

It would further appear, and it is so found, that the Church building proposed is one of relatively modest size (approximately 10,000 square feet), and will not cause an adverse impact on the neighbors or neighborhood. Indeed, the neighbors were given adequate opportunity by the Applicants to address the request, and no negative comment was received.

While the Applicants have requested variances to the more typical building setback requirements applicable to this property and the Applicants' project, the Harford County Department of Planning and Zoning has concluded that those building setback variances are not necessary. All normal building setback requirements are complied with and, accordingly, no building setback variances are necessary.

However, it is the more unusual "use" setback requirements of which the Applicants run afoul. As the Applicants' use is an institutional use in an R1 District, certain "use" setbacks are required from adjoining residential properties. If the adjoining properties were not residential, these use setbacks, which vary in distance from typical building setbacks, would not be necessary. Thus, it is particularly important to note that the immediately adjoining neighbors, whom these setbacks are specifically to protect, have expressed no objection.

Furthermore, the "use" setbacks are applicable not only to buildings, but also to the accessory features of those uses such as parking lots. The Applicants' parking areas must be set back 50 feet from adjoining properties, without the requested variance. Obviously, the imposition of this use setback, and its application to parking areas, very highly constrains the use of the Applicants' property, which is extraordinarily deep (718 feet) in relationship to its width (189 feet). After the application of the required 50 foot use setbacks to the Applicants' parcel, little useable area would be left for the construction of the proposed Church building itself, adjoining drive aisles, necessary parking and storm water management.

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While perhaps a more complex case than most variance requests, the Applicants' request requires an application of the traditional variance standard. Is there some unique or unusual feature of the Applicants' property or topography which causes it a practical difficulty or unusual hardship? This question is answered affirmatively, as is suggested by the Department of Planning and Zoning, given the fairly narrow, elongated size of the parcel, which is not conducive to the construction of an institutional use such as the Church proposed. Furthermore, the standard requires one to determine if the relief requested can be granted without adverse impact to adjoining properties. Based upon the evidence presented, it is found that the relief requested, which allows merely an impact of the parking areas and drive aisles within the required use setback, will have no adverse impact on adjoining property owners or the neighboring properties. Indeed, the proposed structure and use can be seen as a beneficial use of the property, one which should have positive impacts to the immediate and surrounding community.

Note is also made of the Applicants' request, supported by the Department of Planning and Zoning, that it be granted variances to the impact of the existing sanctuary, and existing cemetery, on applicable side yard setbacks. The existing sanctuary is located approximately 38 feet from the side yard; the cemetery is located within 10 feet of the side lot line. Both are accordingly located well within the required use (and building) setbacks. However, the Department of Planning and Zoning acknowledged that these uses are non-conforming. While there may be some benefit in legitimizing their existence by the granting of a variance, there is simply no statutory justification for doing so. The existing Church and cemetery exist; they can remain. While their non-conforming status will, perhaps, allow them to continue to thrive, they cannot be expanded without further Board of Appeals approval, given their non-conforming use nature. There is simply no justification within Section 267-11 of the Harford County Development Regulations to allow these existing, recognized, non-conforming uses to be legitimized by the granting of a variance when they do not meet the clear variance analysis. There is nothing unique about the property or topographical condition which results in practical difficulty or unreasonable hardship to the Applicant. In truth, no hardship or practical difficult results from the placement of the cemetery and existing Church building as they are, again, recognized non-conforming uses.

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### **CONCLUSION:**

For the above reasons, it is recommended that the requested use variances be granted, subject to:

1. The Applicants shall obtain all necessary permits and inspections.
2. The Applicants shall submit a site plan for review and approval thru the Development Advisory Committee.
3. The Applicants shall submit a final landscaping plan to the Department of Planning and Zoning for review and approval with the site plan.
4. The two parcels shall be combined.

Date: January 24, 2007

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 22, 2007.**